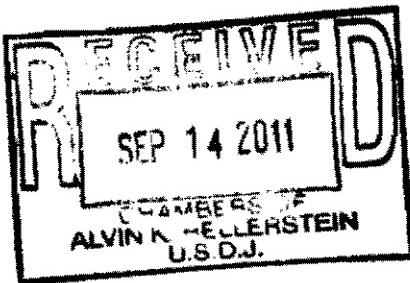



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September 9, 2011

**Via Fax No. (212) 805-7942**  
 Honorable Alvin K. Hellerstein  
 United States District Court  
 Southern District of New York  
 Daniel Patrick Moynihan  
 United States Courthouse  
 500 Pearl St.  
 New York, NY 10007-1312

Re: Thomas Magee v. The Port Authority of New York and New Jersey, et al.  
 21 MC 100 (AKH); 05 Civ. 7210 (AKH)

Dear Judge Hellerstein,

Our firm was recently substituted as counsel for Thomas Magee on June 14, 2011. Mr. Magee suffered significant orthopedic injuries while working for the joint venture, Yonkers Tully Pegno at the World Trade Center site on June 10, 2002. Mr. Magee, through his former counsel, filed a complaint asserting labor law claims against the Port Authority, World Trade Center Properties LLC<sup>1</sup> and the City of New York in state court on February 5, 2003. The Port Authority removed the case to federal court pursuant to the Air Transportation Safety and System Stabilization Act on August 12, 2005.

Understanding that many orthopedic cases have been resolved, we contacted the City of New York and the Port Authority to get a handle on the status of Mr. Magee's case. We have learned that the impediment to resolution of the case is the defendant's belief that a prior respiratory claim in the original Victim's Compensation Fund waived his right to bring an action for the orthopedic injuries he suffered on June 10, 2002.

<sup>1</sup> The complaint improperly named Silverstein Properties but World Trade Center Properties LLC served its Verified Answer in this litigation on March 20, 2003.

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We would like to move this case toward resolution, but understand that there is currently a stay in place. We intend to move to strike the ATSSSA waiver defense, but seek the Court's guidance on whether the motion will be permitted at this time. We are prepared to move immediately or to discuss the issue further at the October 11, 2011 conference.

Respectfully submitted,

KREINDLER & KREINDLER LLP



Noah H. Kushlefsky

cc: David R. Biester, WTC Captive Insurance Company, Inc.  
Alyson Villano, Patton Boggs, LLP